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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1946**

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**No. 827**

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**SOUTHERN PACIFIC COMPANY,**  
*Petitioner,*

*vs.*

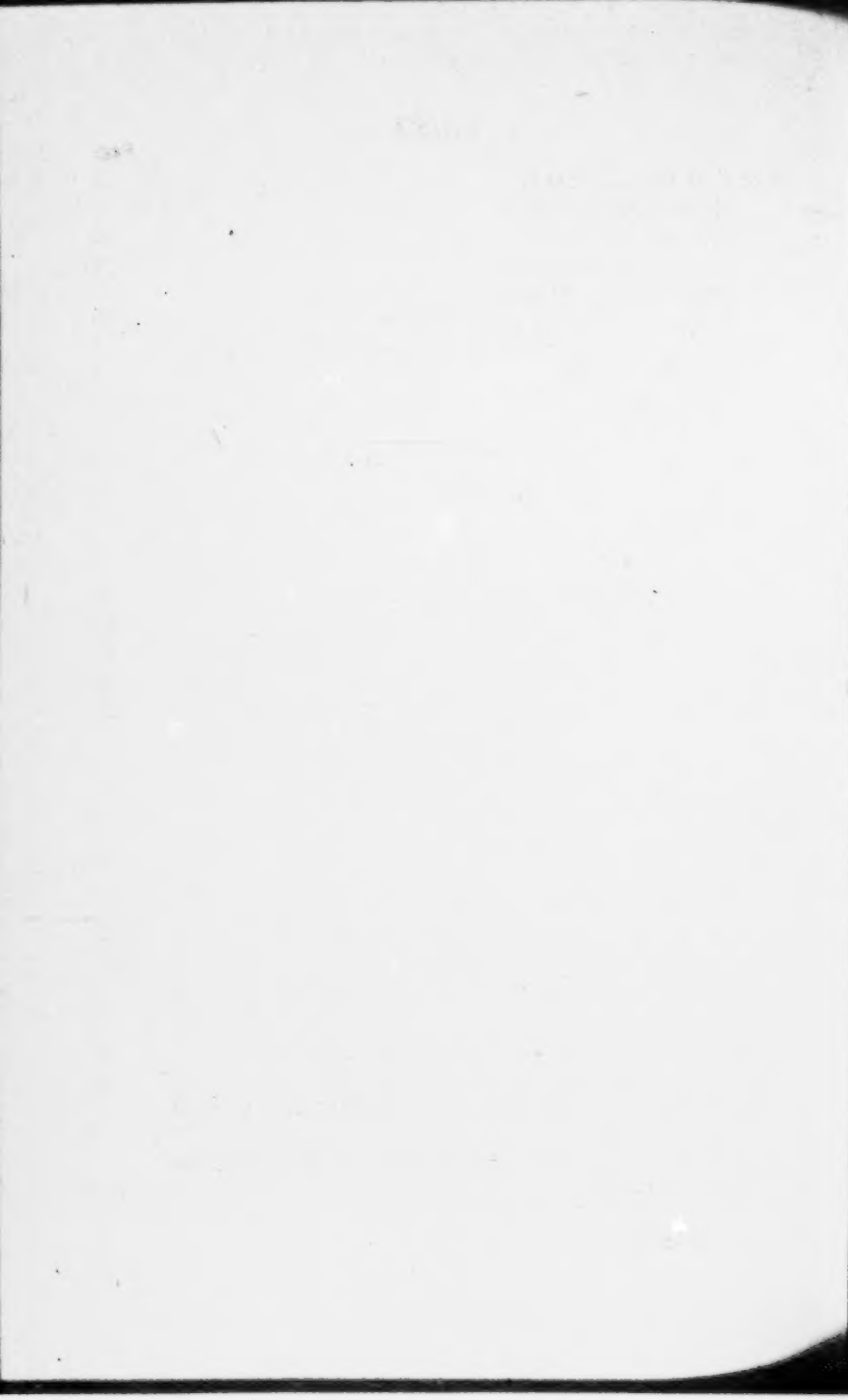
**THE UNITED STATES**

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**PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS AND BRIEF FOR PETITIONER  
IN SUPPORT THEREOF.**

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✓  
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*vs.*

THE UNITED STATES,

*Respondent*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS**

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Southern Pacific Company, a corporation, prays that a writ of certiorari issue to review the judgment of the Court of Claims, entered on October 7, 1946, in the above entitled case, docketed as Nos. 45952 and 46012 in the Court of Claims.

**Summary Statement of the Case**

In the summer and early fall of 1941, petitioner, a common carrier by railroad, performed transportation service for the United States by carrying certain shipments of heavy duty motor trucks, knocked down and boxed for export and shipped by rail to San Francisco, consigned to China Defense Supplies, Inc., in care of certain steamship lines.

The motor trucks in question were trucks which had been purchased by the United States for transfer and delivery to representatives of the Republic of China, pursuant to requisitions made by the Republic of China and authorization of the President of the United States, under the Lend-Lease Act of March 11, 1941, c. 11, 55 Stat. 31. A part of the trucks so requisitioned and furnished were described as 6 x 6 (meaning with six wheels, all powered) heavy duty tactical type trucks, and part were described as 4 x 2 (meaning with four wheels, two of which were powered) heavy duty general transport type trucks. The Court of Claims found that all these trucks were requisitioned and intended for use by the Chinese Army and also found that they were similar to trucks procured and used by the United States Army and conformed to the specifications of the War Department for trucks for use by the United States Army.

For the carriage by rail from the points of origin to San Francisco, petitioner billed the transportation charges at the applicable commercial rates. Payment was made by the Government at lower net rates constructed by making land-grant deductions from the applicable commercial rates, *i. e.* at net land-grant rates. Petitioner thereupon brought this action to recover the difference between net land-grant rates as paid, and the full commercial rates claimed.

The case turns on the construction and application of Section 321(a), Title III, Part II, of the Transportation Act of 1940, which provides that the full applicable commercial rates, fares, or charges shall be paid for the transportation of persons or property for the United States, except in the case of military or naval property of the United States moving for military or naval and not for civil use, or members of the military or naval forces of the United States when such members are traveling on official duty. If

the exception applies to the shipments in question, land-grant rates were rightly paid. If the exception does not apply to these shipments, the petitioner is entitled to recover the difference between land-grant rates, as paid, and the full commercial rates claimed.

The Court of Claims held:

1. That the use of the expression "and not for civil use" is clearly an intention that no construction shall be given the term "military" that will include the idea of civil use; that is to say, the term "military" is to be given a strict construction (R. 21).

2. That the motor vehicles in question were not for civil use but were intended for use by the Chinese Army; that is, intended for military and not for civil use (R. 22).

3. That the military use referred to in the Transportation Act of 1940 is not to be confined to use by the United States Army, and the furnishing of military equipment for the use of the Chinese Army under the lend-lease program is military use of military equipment in the sense of the Transportation Act of 1940 (R. 22).

4. That the shipments in question were shipments of military property of the United States moving exclusively for military use, and therefore land-grant rates were applicable and petitioner is not entitled to recover (R. 23).

### **Statute Involved**

The statute in question is Section 321(a), Title III, Part II, of the Transportation Act of 1940; Act of September 18, 1940, c. 722, 54 Stat. 898, 954; 49 U. S. Code, sec. 65(a):

"Notwithstanding any other provision of law, but subject to the provisions of sections 1 (7) and 22 of the Interstate Commerce Act, as amended, the full

applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty: \* \* \*

### **The Questions Presented**

The important questions in this case, decided by the Court of Claims, are:

I. Whether heavy duty motor trucks procured by the United States, at a time when it was not at war, for transfer and delivery under the Lend-Lease Act to China Defense Supplies, Inc., on a requisition by the Republic of China specifying that the trucks were for "Army use", were, at the time of transportation, military property of the United States in the sense of the Transportation Act of 1940.

II. Whether such heavy duty motor trucks procured by the United States and shipped by rail to San Francisco for transfer and delivery under the Lend-Lease Act to China Defense Supplies, Inc., acting for the Republic of China, were, at the time of transportation, moving for military use in the sense of the Transportation Act of 1940.

III. Whether the words of the exception in Section 321 (a) of the Transportation Act of 1940—"military or naval \* \* \* use"—include "use" by other countries, or are limited to "military or naval \* \* \* use" by the armed forces of the United States.



### **Specification of Errors**

The Court of Claims erred:

1. In holding that the shipments in question were shipments of military property of the United States in the sense of the Transportation Act of 1940.

2. In holding that the shipments in question were moving for military use in the sense of the Transportation Act of 1940.

3. In holding that the shipments in question were moving for military use in the sense of the Transportation Act of 1940, upon a finding that they were shipped by rail to San Francisco for transfer and delivery to China Defense Supplies, acting for the Republic of China, under the Lend-Lease Act of March 11, 1941, and in failing to hold that such movement for disposition under the Lend-Lease Act was not movement for use in the sense of the Transportation Act of 1940.

4. In holding that military use by the Republic of China, at a time when the United States was not at war, is "military \* \* \* use" in the sense of the Transportation Act of 1940, and in failing to hold that military use in the sense of the Transportation Act of 1940 refers to military use by the armed forces of the United States.

### **Reasons for Allowance of the Writ**

The decision of the Court of Claims involves the construction of Section 321(a) of the Transportation Act of 1940, as applied to shipments of commodities and articles procured by the United States for transfer and delivery to other countries under the Lend-Lease Act.

On all such shipments of lend-lease material and supplies, of whatever character, the Government has claimed land-grant rates and all settlements of the railroad carriers' transportation bills have been made on that basis, the

position of the Government being that "defense articles" in the sense of the Lend-Lease Act are necessarily "military or naval property of the United States" moving exclusively for military or naval use in the sense of the Transportation Act of 1940.

The volume of the traffic in question is very large and there are numerous cases pending in the Court of Claims and in the district courts involving similar claims. There are also many thousands of disputed accounts, involving land-grant deductions and disallowances, held in suspense accounts by the several carriers which have handled lend-lease freight traffic over routes involving land-grant mileage.

This Court has granted certiorari in two similar cases, *United States v. Powell et al.* and *United States v. Atlantic Coast Line R. Co.*, Nos. 56 and 57, October term 1946, which involve shipments of phosphate rock and superphosphate to the British Ministry of War Transport for use as fertilizer to increase agricultural production in England. It is submitted, however, that the decision of those cases, in view of the character of the commodities and articles there in question, will not settle the important questions above stated and will not necessarily be controlling in the very large number of similar cases involving shipments of lend-lease material and supplies now pending or which may be filed.

Wherefore, it is respectfully submitted that the writ of certiorari herein prayed should be allowed.

C. O. AMONETTE,  
LAWRENCE CAKE,  
*Counsel for Petitioner.*

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**No. 827**

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SOUTHERN PACIFIC COMPANY,  
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THE UNITED STATES,  
*Respondent*

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**BRIEF FOR PETITIONER IN SUPPORT OF PETITION  
FOR CERTIORARI**

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**Opinion Below**

The opinion of the Court of Claims is reported in — F. Supp. —, and is included in the record herein (R. 20).

**Jurisdiction**

The judgment of the Court of Claims was entered on October 7, 1946 (R. 23). The jurisdiction of this Court is invoked under Section 3 of the Act of February 13, 1925, c. 229, 43 Stat. 939, as amended; 28 U. S. Code, Section 288.

**Statement of the Case**

The case is stated in the petition for certiorari. It involves shipments of heavy duty motor trucks knocked down

and boxed for export, procured by the United States for transfer and delivery to the Republic of China under the Lend-Lease Act of March 11, 1941, in the summer and fall of 1941 prior to the entry of the United States into the war.

The question presented, in general terms, is whether petitioner, a common carrier by railroad, should have been paid for the transportation by rail of these shipments to San Francisco for transfer and delivery to representatives of the Republic of China, on the basis of the full commercial rates claimed, or on the basis of net land-grant rates. If the shipments in question were shipments of military property of the United States moving exclusively for military use, in the sense of the Transportation Act of 1940, the payments made on the basis of net land-grant rates were correct. If these shipments were not shipments of military property of the United States moving exclusively for military use in the sense of the Transportation Act of 1940, petitioner is entitled to recover the balance claimed.

### **Specification of Errors to Be Urged**

The Court of Claims erred:

1. In holding that the shipments in question were shipments of military property of the United States in the sense of the Transportation Act of 1940.

2. In holding that the shipments in question were moving for military use in the sense of the Transportation Act of 1940.

3. In holding that the shipments in question were moving for military use in the sense of the Transportation Act of 1940, upon a finding that they were shipped to San Francisco by rail for transfer and delivery to China Defense Supplies, acting for the Republic of China, under the Lend-Lease Act of March 11, 1941, and in failing to hold that such movement for disposition under the Lend-Lease Act was not

movement for use in the sense of the Transportation Act of 1940.

4. In holding that military use by the Republic of China, at a time when the United States is not at war, is "military • • • use" in the sense of the Transportation Act of 1940, and in failing to hold that military use in the sense of the Transportation Act of 1940 refers to military use by the armed forces of the the United States.

### **Outline of the Argument**

I. Commodities and articles procured by the United States for transfer and delivery to other countries, under the Lend-Lease Act of March 11, 1941, at a time when the United States was not at war, are not "military or naval property of the United States" in the sense of the Transportation Act of 1940.

(1) The background and legislative history of Section 321(a) of the Transportation Act of 1940 demonstrate that its purpose was to relieve the railroads of the greater part of an obligation which impaired their ability to meet adequately the needs of interstate commerce, by contracting the obligation within its original limits, i. e. to property, rations, uniforms, equipment, and supplies of the armed forces of the United States. The commodities and articles in question were not purchased or intended for use by the military or naval forces of the United States and were, therefore, not "military or naval property of the United States" within the intendment of the Transportation Act of 1940.

(2) The trucks in question, purchased and intended for transfer and delivery to China, at a time when the United States was not at war, were not "military or naval property of the United States" in the sense of the Transpor-

tation Act of 1940 *at the time of movement by rail to San Francisco*. Transportation rates must be determined as of the date of movement and depend on the character of the commodity or article shipped, at that time. The character of the articles in question was simply that of motor trucks, with spare parts and tools, moving to San Francisco for transfer and delivery to a foreign government. That they were for export to China as lend-lease aid and that the Chinese Government intended to use them in military operations against the Japanese are irrelevant facts on the issue here presented.

In this respect the decisions of this Court and the Court of Claims on the obligation of the railroads—prior to the Transportation Act of 1940—to carry “troops of the United States” at reduced rates, indicate the test which must be applied. *Alabama Great Southern R. Co. v. United States*, 45 Ct. Cls. 522; *United States v. Union Pacific R. Co.*, 249 U. S. 354. In those cases it was held that it was the status of the individual travelers *at the time of movement* which determined whether or not they were “troops of the United States” in the sense of the land-grant statutes, and not the fact that they had been soldiers or that they were potential soldiers, or that the transportation was related in some way to the operation of the military establishment. As this Court said in the *Union Pacific* case, 249 U. S. at page 359:

“And the fact that the transportation is for the purposes of the government in connection with its military establishment is immaterial. Workmen in armor plants and civilian clerks in the War Department at Washington travel for purposes of the government, but are obviously not ‘troops of the United States’ within the meaning of the land-grant legislation.”

II. Commodities and articles shipped by rail to ports for transfer and delivery to the representatives of other

countries are not "moving for military or naval and not for civil use" in the sense of the Transportation Act of 1940.

Such movements are not movements for use at all, so far as the United States is concerned, but for disposition to a foreign government under the authority of the Lend-Lease Act. There is a clear distinction in law between sale or other disposition, on the one hand, and use, on the other hand. *McLeod v. Dillworth Co.*, 322 U. S. 327, 330-331. The sale or disposition of property is not consistent with its use. The movement of property to "sell, transfer title to, exchange, lease, lend, or otherwise dispose of" it—the language of the Lend-Lease Act—is not movement for use.

That property moving for the purpose of being transferred to a foreign government is moving for disposition rather than use is given recognition by the Defense Aid Supplemental Appropriation Act 1941, 55 Stat. 53, 54, which provides in Section 3:

"Any defense article procured from an appropriation made by this act shall be retained by or transferred to and for the use of such department or agency of the United States as the President may determine, in lieu of being disposed of to a foreign government, whenever in the judgment of the President the defense of the United States will be best served thereby."

The Lend-Lease Act was not unique in the authorization of sale or other disposition of property of the United States. Compare the Act of May 10, 1918, c. 70, 40 Stat. 548; the Act of June 5, 1920, c. 240, 41 Stat. 949; the Act of June 28, 1940, c. 440, Title I, section 14, 54 Stat. 681; and the Act of June 15, 1940, c. 365, 54 Stat. 396.

III. The words "military or naval \* \* \* use" in Section 321(a) of the Transportation Act of 1940 should

fairly be construed to mean "military or naval \* \* \* use" by the military or naval forces of the United States.

1. The purpose of Section 321(a) was to contract the land-grant obligation of the railroads within its original limits, *i. e.* to property, rations, uniforms, equipment, and supplies of the armed forces of the United States.

2. The exception in favor of military and naval traffic is a single exception, applicable to military or naval *property* of the United States and to the military or naval *forces* of the United States, and should be consistently read as such—military or naval property within the exception being only such property as is transported for the use of the military or naval forces of the United States.

3. The obligation of the railroads to carry "military or naval property of the United States" at reduced rates is narrower under the Transportation Act of 1940 than it was under prior law when it extended to all property of the United States. Even then, when the obligation was broader, it was never held to extend to the transportation of property for the benefit of others than the United States or to transportation for which others were liable to reimburse the United States. *Henry H. Cross Co. v. United States*, 133 F. (2d) 183; *Givens v. Louisville & N. R. Co.*, 140 I. C. C. 605, 606; *Havens v. Chicago & N. W. R. Co.*, 20 I. C. C. 156, 158.

Respectfully submitted,

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